

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4222 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SINSTER PLAST CONTAINERS PROFILE PLANT

Versus

CHANDUBHAI H KOVIDA

Appearance:

MR NC NAYAK for Petitioner
NOTICE SERVED for Respondent No. 1
MR MI PATEL for Respondent No. 2
MR MUKESH PATEL, AGP for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/02/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order passed by the Collector setting aside the exemption

granted by the Municipality in favour of the petitioner unit from payment of octroi duty on the ground that Sinster Plast Containers, Plastic Division of the petitioner Company was a new undertaking. The Municipality had granted the exemption by communication dated 27.4.1987 (Annexure "E"). One of the then Councillors of the Municipality challenged the said exemption by filing an appeal before the Collector, Mehsana under Section 258 of the Gujarat Municipalities Act. The Collector allowed the appeal and set aside the resolution of the Municipality passed on 16.4.1987. It is against the said order that the present petition is filed.

2. It is not necessary to go into all the contentions urged by the petitioner and the submissions made on behalf of the respondents. Admittedly, the exemption was granted as per the Municipality's resolution dated 16.4.1987. Hence, the petitioner was entitled to rely upon the same as the same conferred several benefits on the petitioner. For any reason, if there was any justification for setting aside such a resolution, the same could not have been done without giving the petitioner an opportunity of being heard. However, the Collector set aside the said resolution of the Municipality without joining the petitioner as a party in Appeal No. 26/88 or without giving any opportunity of hearing to the petitioner. On this ground alone, the petition deserves to be allowed. Hence, the impugned order dated 16.7.1988 (Annexure "F") of the Collector is set aside without prejudice to the powers of the authorities to pass appropriate orders in accordance with law after giving the petitioner an opportunity of being heard.

3. Since the impugned order of the Collector was stayed during pendency of this petition, no further consequential order is required to be passed at the conclusion of this proceeding.

Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

February 18, 2000 (M.S. Shah, J.)
sundar/-